

PASTOR B. CONSTANTINO, PLAINTIFF-APPELLANT, VS. HERMINIA ESPIRITU, DEFENDANT-APPELLEE.*G.R. No. L-22404. May 31, 1971*

Ponente: DIZON, J.

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This is a direct appeal on a question of law taken by Pastor B. Constantino from an order of the Court of First Instance of Rizal denying his motion for the admission of his amended complaint in Civil Case No. 5924, entitled "Pastor B. Constantino vs. Herminia Espiritu."

Appellant's complaint alleged, inter alia, that he had, by a fictitious deed or absolute sale annexed thereto, conveyed to appellee on October 30, 1953, for a consideration of P8,000.00, the two-storey house and four (4) sub-division lots covered by Transfer Certificate of Title No. 20174 issued by the Register of Deeds of Rizal on October 25, 1950 in the name of Pastor B. Constantino, married to Honorata Geukeko, with the understanding that appellee would hold the properties in trust for their illegitimate son, Pastor Constantino, Jr., still unborn at the time of the conveyance; that thereafter appellee mortgaged said properties to the Republic Savings Bank of Manila twice to secure payment of two loans, one of P3,000.00 and the other of P2,000.00, and that thereafter she offered them for sale. The complaint then prayed for the issuance of a writ of preliminary injunction restraining appellee and her agents or representatives from further alienating or disposing of the properties, and for judgment ordering her to execute a deed of absolute sale of said properties in favor of Pastor B. Constantino, Jr., the beneficiary (who, at the filing of said complaint, was about five years of age), and to pay attorney's fees in the sum of P2,000.00.

As a result of the conveyance mentioned heretofore, TCT No. 20714 in the name of plaintiff was partially cancelled and in lieu thereof, TCT No. 32744 was issued by the Register of Deeds of Rizal in the name of appellee Herminia Espiritu.

On December 16, 1959, appellee moved to dismiss the complaint on the ground that it stated no cause of action because Pastor Constantino, Jr., the beneficiary of the alleged trust, was not included as party-plaintiff, and on the further ground that appellant's cause of action was unenforceable under the Statute of Frauds.

In his opposition to said motion to dismiss, appellant argued that the Statute of Frauds does not apply to trustee and cestui que trust as in the case of appellee and her illegitimate child, and that for this reason appellant would not be barred from proving by parol evidence an implied trust existing under Article 1453 of the Civil Code. On the other hand, in her rejoinder to appellant's opposition, appellee argued that what the former was invoking in his complaint (Paragraph V, Complaint) was an implied trust under Article 1453 of the Civil Code and not an express trust under Section 3, Rule 3 of the Revised Rules of Court. Finding the grounds alleged in the motion to dismiss to be meritorious, the trial court dismissed the complaint, with costs.

Immediately after receiving notice of said order of dismissal, appellant filed a motion for the admission of an amended complaint, attaching thereto a copy thereof, the amendment consisting mainly of the inclusion of the

minor, Pastor Constantino, Jr. as co-plaintiff. The amended complaint further prayed for the appointment of appellant as said minor's guardian ad litem. An opposition thereto was filed on the ground that the amendment aforesaid was not an inclusion but a substitution of the party plaintiff. As the latter had no interest whatsoever in the subject matter of the case, it was argued that the substitution was not allowed in this jurisdiction. Appellant's answer to appellee's opposition alleged that, as the ground relied upon in said opposition was purely technical, even the substitution of the party plaintiff should be allowed under Section 2, Rule 17 of the Rules of Court. Thereafter the lower court issued the appealed order denying appellant's motion for the admission of his amended complaint. Hence, the instant direct appeal.

The original as well as the amended complaint mentioned above allege that the sale made by appellant Constantino in favor of appellee of the properties described in said pleadings was subject to the agreement that the vendee would hold them in trust for their at that time already conceived but unborn illegitimate child; that the vendee violated this agreement, firstly, by subjecting them to two different contracts of mortgage, and later by trying to sell them, this being not only in violation of the aforesaid agreement but prejudicial to the cestui que trust; that the action was commenced to compel the vendee to comply with their agreement by executing the corresponding deed of conveyance in favor of their minor son, and to desist from further doing any act prejudicial to the interests of the latter.

It appears then that, upon the facts alleged by appellant, the contract between him and appellee was a contract pour autrui, although couched in the form of a deed of absolute sale, and that appellant's action was, in effect, one for specific performance. That one of the parties to a contract is entitled to bring an action for its enforcement or to prevent its breach is too clear to need any extensive discussion. Upon the other hand, that the contract involved contained a stipulation pour autrui amplifies this settled rule only in the sense that the third person for whose benefit the contract was entered into may also demand its fulfillment provided he had communicated his acceptance thereof to the obligor before the stipulation in his favor is revoked.

It appearing that the amended complaint submitted by appellant to the lower court impleaded the beneficiary under the contract as a party co-plaintiff, it seems clear that the three parties concerned therewith would, as a result, be before the court and the latter's adjudication would be complete and binding upon them.

The ruling in the case of *Echus vs. Gan*, 55 Phil. 527 involving facts similar to the ones before Us is of obvious application to the latter. We quote the following pertinent portions of our decision in said case:

"This action was instituted in the Court of First Instance or Occidental Negros by Adoracion Rosales de Echus, assisted by her husband Enrique Echus, for the purpose of obtaining a judicial order requiring the defendant Maria Gan, as administratrix of the estate of her deceased husband, Manuel Gay Yulingco, as well as the heirs of said decedent, to execute in due form a contract, with appropriate description of the real property involved, in conformity with the terms of an agreement dated September 3, 1927, executed by the deceased Manuel Gay Yulingco, in life, and Enrique Echus, one of the plaintiffs in the case (Exhibit A). To this action the defendants interposed a general answer and cross-complaint, in the latter of which they sought a decree annulling the contract Exhibit A as excessively onerous and illegal. Upon hearing the cause the trial court absolved the plaintiffs from the cross-complaint and gave judgment in favor of the plaintiffs upon the complaint, requiring the defendants, within thirty days from the date of the finality of the decision, to execute before a notary public and deliver to the plaintiffs a contract similar in terms to that indicated in the Exhibit A but containing, in addition, a description of the real property involved, in such form as would enable the plaintiff's to procure said contract to be inscribed on the certificate of title corresponding to said property, with costs against the defendants. From this judgment the defendants appealed.

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The contract in question, Exhibit A, on which this action is based, was executed by Manuel Gay Yulingco and Enrique Echaus, and although the contract binds Yulingco to pay to Adoracion Rosales de Echaus, the wife of Enrique Echaus, the sum of fifty centavos for each picul of sugar that may be produced upon the two haciendas covered by the contract during the fourteen years beginning with the crop for 1927-1928, nevertheless this action is not instituted by the nominal beneficiary, Adoracion Rosales de Echaus, directly for the purpose of obtaining the benefit which said contract purports to confer upon her. The purpose of the action is to compel the defendants to execute a contract pursuant to the tenor of the contract Exhibit A, but containing an adequate description of the property contained in the two haciendas, for the purpose of enabling Echaus to procure the annotation of said contract on the Torrens certificates of title. It is therefore evident that, technically speaking, the proper person to bring this action is Enrique Echaus, the person with whom the contract was made by Yulingco. It is, nevertheless, equally obvious that the wife of Enrique Echaus is a party in interest, and she is certainly a proper, if not an entirely necessary party to the action. It results that there is really no improper joinder of parties plaintiff."

Whether the contract of sale entered into between appellant and appellee was - as claimed in the amended complaint - subject to the agreement that appellee would hold the properties in trust for their unborn child is a question of fact that appellee may raise in her answer for the lower court to determine after trial. On the other hand, the contention that the contract in question is not enforceable by action by reason of the provisions of the Statute of Frauds does not appear to be indubitable, it being clear upon the facts alleged in the amended complaint that the contract between the parties had already been partially performed by the execution of the deed of sale, the action brought below being only for the enforcement of another phase thereof, namely, the execution by appellee of a deed of conveyance in favor of the beneficiary thereunder.

WHEREFORE, the appealed order is hereby set aside and the case is remanded to the lower court for further proceedings in accordance with law.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Teehankee, and Villamor, JJ., concur.

Makalintal, J., in the result.

Barredo, J., concurs in a separate opinion.

Makasias, J., concurs in the separate opinion of Justice Barredo.

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CONCURRING OPINION

BARREDO, J.:

I concur, but it may not be amiss for me to state briefly my humble view as regards appellee's claim that appellant's action is barred by the Statute of Frauds.

As I understand the nature of appellant's action, it is not to enforce an entirely unwritten contract, which is what is generally barred by the Statute of Frauds; rather, it is for the enforcement of a condition not appearing in the written agreement herein involved but which condition, according to appellant, was in fact part thereof but which the parties had agreed not to include in the deed, probably because of doubt that such a stipulation in favor of an already conceived but still unborn illegitimate child may not be judicially permissible. On the other hand, under the theory of appellee, even assuming, alternatively, that there was such an understanding to benefit their unborn

child, the conveyance to her of the land in question is an entirely separate contract from the obligation assumed by her of turning over the property in question to said child with the appellant, hence this separate agreement not being in writing is unenforceable by action under the Statute of Frauds. I consider such posture of appellee untenable.

To my mind, the obligation of the appellee to execute the conveyance in favor of their child was part and parcel of one single verbal agreement, in partial implementation of which the said property was conveyed to her. In other words, appellant's action is simply one for the enforcement of an implied trust under Article 1453 of the Civil Code which provides thus:

"ART. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated."

Accordingly, the only rule that can possibly have any relevance to appellee's situation, instead of the Statute of Frauds, would be the parole evidence rule which, in any event, is not one of the grounds for dismissal of a complaint, since it is a rule exclusively of admissibility of evidence and not of any other branch of procedure. As a matter of fact, under the known circumstances of this case, I even doubt very much if the appellee will be able to successfully invoke the parole evidence rule when the trial is eventually held, for the simple reason that appellant, has in effect specifically alleged in his complaint that the deed of sale in favor of appellee was subject to the condition already mentioned that their illegitimate child would be the real beneficiary thereof. The general rule of admissibility which excludes evidence aliunde^[1] tending to vary the terms of a written agreement is subject to the exception, among others, that the same does not apply when the party wishing to prove the real agreement or the additional terms specifically alleges such agreement or terms in his pleading. Otherwise stated, the matter of whether or not there is really an obligation on the part of the appellee to convey the land in question to her child with appellee is only one of proof, there being no technical bar to the evidence, much less to appellant's action. Withal, like the Statute of Frauds, the parole evidence rule may not be used as a shield to commit fraud with impunity, particularly, when, as in this case, it is alleged that an implied trust is involved. I would even go further. I venture to add that even if this case were considered as one involving an express trust under Article 1443 of the Civil Code which provides that an express trust affecting realty may not be proved by parole evidence, I would still hold that appellant's case is subject to this exception. It is a fundamental principle underlying all rules of proof that never may the same be utilized as instruments to conceal or shield fraud.

The main opinion holds that the execution of the deed of conveyance in favor of the appellant was a partial execution or consummation of the agreement between appellant and appellee which puts the enforcement of the obligation in question beyond the pale of the Statute of Frauds. Evidently, the predicate of said proposition is that the conveyance of the property in question to appellee and her obligation to hold the same only in trust for their illegitimate child still unborn at that time constitute one single contract, albeit verbal, as I have already explained above. Consequently, one part of the contract having been complied with already by appellant by executing the formal deed in favor of appellee, the latter cannot now excuse herself from complying with her part of the bargain by invoking the Statute of Frauds.

Indeed, from whatever angle one views this case, most of all from the standpoint of the innocent child begotten by the parties out of wedlock and whose future seems uncertain, the conclusion is inescapable that the trial court erred in sustaining appellee's motion to dismiss. With the procedural technicalities now set aside, whether the property in question was indeed intended by appellant and appellee to remain with appellee for her own benefit or to be in her name only temporarily for the benefit of their child is the main question of fact which by this decision the court a quo may now try and decide.

[1] This rule of evidence is commonly known as the parol evidence rule. In its operation, however, it excludes all kinds of evidence, whether oral, in writing or otherwise, which tends to prove a term or condition not appearing in the written agreement, if such terms or condition had been agreed upon before or simultaneously with the agreement. For this reason, I prefer to call the evidence barred by the general rule evidence aliunde rather than parol evidence, which is of-ten mistaken to refer only to evidence by word of mouth, which, as already explained, is not the sense in which it is supposed to be understood in the parol evidence rule.

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